NATIONAL UNION PETROLEUM & CHEMICAL INDUSTRY WORKERS

v.

AMALGAMATED PROPERTIES & INDUSTRIES BHD.

SUPREME COURT, KUALA LUMPUR
LEE HUN HOE CJ (BORNEO)
WAN HAMZAH SCJ
WAN SULAIMAN SCJ
[CIVIL APPEAL NO. 35 OF 1987]
25 NOVEMBER 1988

LABOUR LAW: *Complaint under s. 56 of the Industrial Relations Act 1967 - Retrenched employees not paid bonus - Non-compliance with collective agreement - Order of certiorari - Powers of the Industrial Court under s. 56(2).*

The respondent company retrenched some of its employees in 1984 and 1985. The respondent contended that the retrenched employees were not entitled to bonus on the ground that the collective agreement provided for bonus in respect of completed years of employment only.

The appellant union representing the retrenched employees, made a complaint to the Industrial Court under s. 56 of the Industrial Relations Act 1967, asking for an order against the respondent to comply with the collective agreement.

The Industrial Court granted the order. The respondent applied to the High Court for a order of *certiorari* to remove the order into the High Court for the purpose of quashing it based on the following grounds:

(1) The Industrial Court has no jurisdiction to imply/or create a fresh term in a collective agreement on a complaint under s. 56(1) of the Industrial Relations Act 1967.

(2) The Industrial Court has no jurisdiction to order compliance of a term that is not part of the collective agreement.

(3) The Industrial Court has no jurisdiction to exercise its powers under s. 33(1) of the Industrial Relations Act 1967 on a complaint under s. 56(1).

The High Court granted the order and the appellant appealed to the Supreme Court.

Held:

[1] The Industrial Court had the jurisdiction to interpret the collective agreement.

[2] Under s. 56(2)(c) the Industrial Court had the power to make a variation of the terms in a collective agreement if it considered such variation desirable.

[3] Appeal allowed and the Industrial Court's order restored.

[Order accordingly.]

Legislation referred to:
Industrial Relations Act 1967, ss. 33(1), 56(1), (2)(c)

For the appellant - K.P. Gengadharan; M/s. Aziz Abdullah & Co.
For the respondent - Dennis Xavier (Vincent Chandran with him); M/s. Xavier & Chandran

JUDGMENT

Under s. 42 of the Courts of Judicature Act.

In 1984 and 1985 some of the employees of the Amalgamated Properties & Industries Berhad (the respondent company) were retrenched. They were not paid bonus for part of the year in which they were retrenched. The respondent company contended that they were not entitled to bonus in respect of the year in which they were retrenched on the ground that the collective agreement did not provide for payment of such bonus but of bonus in respect of completed years of employment only. Article 30 of the agreement dealing with bonus reads as follows:

> (a) The company shall pay an annual bonus at the end of each calendar year equivalent to 1.6 month's last drawn basic salary exclusive of overtime and allowance of any description.
>
> (b) Employees on probation as at 31 December of the year shall not be entitled to any bonus.
>
> (c) New employees in any one year shall be paid proportionate bonus based on completed months of service and part thereof calculated upto 31 December of that year.
>
> (d) Payments of the bonus for the year shall be made by the company on the pay day of January the following year.

The National Union of Petroleum & Chemical Industry Workers (the appellant union) representing the retrenched employees, made a complaint to the Industrial Court under s. 56 of the Industrial Relations Act and asked for an order against the respondent company to comply with the collective agreement. The Industrial Court granted an order which it called Award No. 158 of 1986 requiring the respondent company to pay bonus in respect of the years in which the employees were retrenched. Being aggrieved with the Industrial Court's order the respondent company applied to the High Court for an order of *certiorari* to remove the Industrial Court's order into the High Court for the purpose of quashing it on the following grounds:

(1) The Industrial Court has no jurisdiction to imply and/or create a fresh term in a collective agreement on a complaint under s. 56(1) of the Industrial Relations Act 1967.

(2) The Industrial Court has no jurisdiction to order compliance of a term that is not part of the collective agreement.

(3) The Industrial Court has no jurisdiction to exercise its powers under s. 33(1) of the Industrial Relations Act 1967 on a complaint under s. 56(1).

The High Court granted the order of *certiorari*, and the appellant union now appeals to the Supreme Court against the High Court's decision.

Sub-sections (1) and (2) of s. 56 of the Industrial Relations Act read as follows:

> 56. (1) Any complaint that any term of any award or of any collective agreement which has been taken cognizance of by the Court has not been complied with may be lodged with the Court in writing by any trade union or person bound by such award or agreement.
>
> (2) The Court may, upon receipt of the complaint:
>
> (a) make an order directing any party:
>
> (i) to comply with any term of the award or collective agreement; or
>
> (ii) to cease or desist from doing any act in contravention of any term of the award or collective agreement;

(b) make such order as it deems fit to make proper rectification or restitution for any contravention or any term of such award or collective agreement; or

(c) make such order as it considers desirable to vary or set aside upon special circumstances any term of the award or collective agreement.

In making its order the Industrial Court stated as follows:

> Article 30(a) of the Agreement provides for payment of annual bonus at the **end of each calendar year**. It does not require that employees must complete the year's service before the annual bonus is payable. In fact, it is the action of the company in retrenching its employees that prevented them from completing their year's service. Looking at Article 30(c), new employees are given proportionate bonus based on their **completed months of service and part thereof.** Not only completed months attract proportionate bonus but also part of the month. By clear implication, we hold that the retrenched workers are entitled to bonus under Article 30 for **completed months of service and part thereof;** payment to be made within one (1) month from date hereof.

It appears to us that Article 30(a) is ambiguous, but in our view it was open to the Industrial Court to interprete it by analogy to Article 30(c) as it did, and by adopting such interpretation it cannot be said that the Industrial Court acted beyond its jurisdiction. It had the jurisdiction to interprete the collective agreement, either correctly or wrongly. As regards the contention that the Industrial Court had interpreted wrongly and had thereby varied the terms of the collective agreement, we find that the Industrial Court had the power to make such variation under s. 56(2)(c) if it considered such variation desirable. Apparently in the opinion of the Industrial Court it was desirable to maintain consistency with Article 30(c) in considering whether the retrenched employees should be paid the claimed bonus.

We allow the appeal and order that the Industrial Court's order be restored. Costs to the appellant union here and in the High Court. Deposit should be refunded to the appellant union.

Also found at [1989] 1 CLJ 141